

Judge Tiffany M. Cartwright

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

DANIEL B. SMITHSON,

Plaintiff,

vs.

DARYL JONATHAN HAMMOND, Washington State Department of Corrections (DOC) Probation Officer, J. DOE HAMMOND, and the marital community comprised thereof; SARAH LEWIS Supervisory Washington State Department of Corrections (DOC) Probation Officer, J. DOE LEWIS, and the marital community comprised thereof; AMBER SMITH, Washington State Department of Corrections (DOC) Probation Officer, J. DOE SMITH, and the marital community comprised thereof; RICHARD HENDRICKS, Washington State Department of Corrections (DOC) Probation Officer, J. DOE HENDRICKS, and the marital community comprised thereof; J. DOESs 1-5 Washington State Department of Corrections (DOC) Supervisory Officers, and the marital communities comprised thereof, ALEX McBAIN, Director & Supervisor of the Washington State Department of Corrections (DOC) J. DOE McBAIN, and the marital community comprised thereof,

Defendants.

NO. 3:22-cv-05029-TMC

PRETRIAL ORDER

JURISDICTION

Jurisdiction is vested in this court by virtue of: 28 U.S.C. § 1331, because Plaintiff's claims arise under the United States Constitution and federal law (42 U.S.C. §1983).

CLAIMS AND DEFENSES

The plaintiff will pursue at trial the following claims: excessive force and wrongful arrest under 42 U.S.C. § 1983.

The defendant will pursue the following affirmative defenses and/or claims: qualified immunity.

ADMITTED FACTS

The following facts are admitted by the parties: (Enumerate every agreed fact, irrespective of admissibility, but with notation of objections as to admissibility. List 1, 2, 3, etc.)

No.	Statement of Admitted Fact	Objections to Admissibility
1.	Plaintiff Daniel Smithson was incarcerated following 2017 convictions in Pierce County Superior Court for second-degree assault and unlawful possession of a controlled substance.	Plaintiff Objection. FRE 402, 403.
2.	After being released from the Monroe Correctional Center in July of 2018, Plaintiff's sentence required him to serve a period of eighteen months of community custody with DOC and to report to a Community Corrections Officer ("CCO").	
3.	At the time of his release from prison, Plaintiff's assigned CCO was the Defendant, Jonathan Hammond.	
4.	The Judgment and Sentence imposing Plaintiff's community custody identifies a list of Court-ordered conditions.	Plaintiff Objection. FRE 802.
5.	On July 3, 2018, immediately following Plaintiff's release from prison, CCO Hammond met with him for an intake.	Plaintiff Objection. FRE 402.
6.	During the intake on July 3, 2018, Mr. Smithson received and signed a document entitled "Conditions, Requirements, and Instructions," which states conditions of Plaintiff's community custody imposed by DOC that supplemented those ordered by the Court.	Plaintiff Objection. FRE 402, FRE 802.

1	7.	The “Conditions, Requirements, and Instructions” document signed by Plaintiff on July 3, 2018 included the statement, “I will abide by written or verbal instructions issued by the CCO.”	Plaintiff Objection. FRE 402, 403, FRE 802.
2	8.	The “Conditions, Requirements, and Instructions” document signed by Plaintiff on July 3, 2018 included the statement, “I will not threaten or exhibit assaultive behavior toward any Department employee, contract staff, or volunteer, or any family member of a Department employee, contract staff, or volunteer.”	Plaintiff Objection. FRE 402, 403, 404, 608, FRE 802.
3	9.	The “Conditions, Requirements, and Instructions” document signed by Plaintiff on July 3, 2018 included the statement, “I will obey all laws.”	Plaintiff Objection. FRE 402, 403, 802.
4	10.	The “Conditions, Requirements, and Instructions” document signed by Plaintiff on July 3, 2018 included the statement, “I am aware that I may be arrested and charged if I threaten any DOC employer or contractor (RCW 9A.46.020), obstruct a CCO who is performing his/her official duties (RCW 9A.76.020), or assault any DOC employee or contractor (RCW 9A.36). I am aware that these are also violations of my supervision.”	Plaintiff Objection. FRE 402, 403, 404, 608, 802.
5	11.	The “Conditions, Requirements, and Instructions” document signed by Plaintiff on July 3, 2018 included the statement, “Should I violate any of these conditions, requirements, or instructions, I understand that I may be sanctioned by the court/Board/Department of Corrections if I am found to have committed the violation(s).”	Plaintiff Objection. FRE 402, 403, 404, 608, 802.
6	12.	Shortly after being released from prison, Plaintiff was detained in the Pierce County jail in connection with a hearing relating to whether he should be involuntarily committed due to concerns that he would be a danger to others.	Plaintiff Objection. FRE 402, 403, 404, 608, 802.
7	13.	Plaintiff was released from jail in August 2018 and was ultimately not involuntarily committed. On January 15, 2019, Plaintiff was required to appear at the Tacoma DOC field office to meet with CCO Hammond.	Plaintiff Objection. FRE 402, 403, 802.
8	14.	On January 17, 2019, Plaintiff signed a stipulated agreement provided by CCO Hammond in which Plaintiff admitted to “[t]hreatening to inflict harm towards a Department of Corrections employee by stating, ‘I am going to snatch you up and make it	Plaintiff Objection. FRE 402, 403, 404, 608, 802.

	federal,' on 01/15/2019" and by "[f]ailing to remain in the lobby after being directed to do so, by leaving campus grounds on 01/15/2019."	
15.	Under the stipulated agreement signed by Plaintiff on January 17, 2019, Plaintiff agreed to have a complete substance abuse evaluation by January 31, 2019.	Plaintiff Objection. FRE 402, 403, 404, 608.
16.	On January 22, 2019, Plaintiff was required to appear at the Tacoma DOC field office to meet with CCO Hammond and provide a UA.	
17.	During his field office visit with CCO Hammond on January 22, 2019, Plaintiff was arrested and placed in jail for alleged violations of the conditions of his community custody.	Plaintiff Objection. FRE 402, 403, 404, 608.
18.	On January 22, 2019, Plaintiff was taken to the hospital for medical attention. X-rays of Plaintiff's right hand were taken which showed an "acute mildly displaced oblique fracture at the proximal to mid fourth metacarpal shaft" and an "acute nondisplaced cortical fracture off the ulnar portion of the distal hamate, centered at the fifth carpometacarpal joint." Plaintiff's right hand was placed in a splint.	
19.	On January 31, 2019, a DOC hearing officer found Plaintiff guilty of violating the conditions of his community custody by exhibiting assaultive behavior towards CCO Hammond and ordered Plaintiff to be confined in jail for thirty days.	Plaintiff Objection. FRE 402, 403, 404, 608, 802.
20.	Plaintiff had the opportunity to administratively appeal the DOC hearing officer's decision regarding his conduct on January 22, 2019, but he did not do so.	Plaintiff Objection. FRE 402, 403, 404, 608.
21.	On February 18, 2019, Plaintiff had open reduction and internal fixation surgery on his right hand.	

ISSUES OF LAW

The following are the issues of law to be determined by the court: (List 1, 2, 3, etc., and state each issue of law involved. A simple statement of the ultimate issue to be decided by the court, such as "Is the plaintiff entitled to recover?" will not be accepted.) If the parties cannot agree on the issues of law, separate statements may be given in the pretrial order.

1. Which constitutional rights (Fourth Amendment or Eighth Amendment) govern Plaintiff's excessive force and wrongful arrest theories under 42 U.S.C. § 1983 for purposes of

1 instructing the jury? The Plaintiff believes the 4th amendment at issue for Plaintiff's false arrest
 2 claim and the 8th amendment and the 4th amendment both apply to the Plaintiff's excessive force
 3 and cruel and unusual punishment claims.

4 2. Whether Plaintiff's claims should survive a halftime motion for judgment as a
 5 matter of law pursuant to Fed. R. Civ. P. 50, *i.e.* could a reasonable trier of fact find liability based
 6 upon the evidence presented by Plaintiff?

7 3. Whether a motion for judgment as a matter of law by Defendant pursuant to Fed.
 8 R. Civ. P. 50 seeking qualified immunity should be granted based upon the evidence admitted at
 9 trial? The Plaintiff believes this issue has already been resolved on summary judgement.

10 4. Whether a motion for judgment as a matter of law by Defendant pursuant to Fed.
 11 R. Civ. P. 50 seeking dismissal of any claims by Plaintiff for punitive damages should be granted
 12 based upon the evidence admitted at trial? Plaintiff believes this to be a question for the jury to
 13 decide at trial.

14 **EXPERT WITNESSES**

15 (a) Each party shall be limited to 1 expert witness on the issues of Plaintiff's medical
 16 condition and alleged damages resulting from the incident on January 22, 2019.

17 (b) The name(s) and addresses of the expert witness(es) to be used by each party at the
 18 trial and the issue upon which each will testify is:

19 (1) On behalf of plaintiff;

20 Michael Hatzakis, MD
 4140 Factoria Blvd SE, Suite A
 21 Bellevue, WA 98006

22 Dr. Hatzakis has been a board certified doctor in physical medicine and rehabilitation for the last
 23 20 years. He is expected to testify regarding Plaintiff's physical injuries caused by the defendant.
 24 He is expected to further testify that the broken bones in Mr. Smithson's hand were caused by the
 25 defendant Hammond. He will further testify regarding Smithson's Emergency department records
 26 and interpretations of the radiology imaging of Mr. Smithson's hand that reveal acute fractures.
 He will further testify that the proximate cause of the broken bones is the incident that occurred
 on January 22, 2019 with Hammond. He will further testify that the medical treatment Smithson
 received was reasonable and necessary. He will further testify that the bills for the medical
 services rendered to Smithson show reasonable and customary charges. He will further testify

1 that any potential residual disability to include postoperative imaging that shows anatomic
 2 alignment and all fractures repaired by fixation. There are no documented residual impairments
 3 in the medical records; however, in many cases after operative fixation with metacarpal and
 4 phalangeal fractures, decreased range of motion and decreased strength often occur. On pages 88
 through page 91 of Smithson's deposition transcript, he endorses decreased hand strength and
 loss of dexterity and this loss may be, consistent with post-operative changes after fracture repairs
 such as has happened here.

5 Or

6 Gregory Byrd, MD
 Olympia Orthopaedic Associates
 7 615 Lilly Road
 Suite 100
 8 Olympia, WA 98506

9 Dr. Byrd is an Orthopedic surgeon. He is expected to testify regarding Plaintiff's physical injuries
 caused by the defendant. He is expected to further testify that the broken bones in Mr. Smithson's
 10 hand were caused by the defendant Hammond. He will further testify regarding Smithson's
 Emergency department records and interpretations of the radiology imaging of Mr. Smithson's
 11 hand that reveal acute fractures. He will further testify that the proximate cause of the broken
 bones is the incident that occurred on January 22, 2019 with Hammond. He will further testify
 12 that the medical treatment Smithson received was reasonable and necessary. He will further
 testify that the bills for the medical services rendered to Smithson show reasonable and customary
 13 charges. He will further testify that any potential residual disability to include postoperative
 imaging that shows anatomic alignment and all fractures repaired by fixation. There are no
 14 documented residual impairments in the medical records; however, in many cases after operative
 fixation with metacarpal and phalangeal fractures, decreased range of motion and decreased
 15 strength often occur. On pages 88 through page 91 of Smithson's deposition transcript, he
 endorses decreased hand strength and loss of dexterity and this loss may be, consistent with post-
 16 operative changes after fracture repairs such as has happened here.

17 And

18 Deborah Kleiman, MD.
 St. Joseph's Hospital
 19 1717 S J St
 Tacoma, WA 98405

20 Dr. Kleiman is one of Smithson's treating medical doctors. She is expected to testify regarding
 Plaintiff's physical injuries caused by the defendant. She is expected to further testify that the broken
 21 bones in Mr. Smithson's hand were caused by the defendant Hammond. She will further testify
 regarding Smithson's Emergency department records and interpretations of the radiology imaging
 22 of Mr. Smithson's hand that reveal acute fractures. She will further testify that the proximate
 cause of the broken bones is the incident that occurred on January 22, 2019 with Hammond. She
 will further testify that the medical treatment Smithson received was reasonable and necessary.
 23 She will further testify that the bills for the medical services rendered to Smithson show
 reasonable and customary charges. She will further testify that any potential residual disability to
 24 include postoperative imaging that shows anatomic alignment and all fractures repaired by
 fixation. There are no documented residual impairments in the medical records; however, in many
 25 cases after operative fixation with metacarpal and phalangeal fractures, decreased range of motion
 26

1 and decreased strength often occur. On pages 88 through page 91 of Smithson's deposition
 2 transcript, he endorses decreased hand strength and loss of dexterity and this loss may be,
 consistent with post-operative changes after fracture repairs such as has happened here.

3 (2) On behalf of defendant.

4 Traci Granston, MD
 Northwest Medical Experts
 5 600 University Street
 Suite 2325
 6 Seattle, WA 98101

7 Dr. Granston is an Orthopedist. She is expected to testify regarding Plaintiff's alleged physical
 8 injuries, prognosis for recovery, and the need, if any, for past or future treatment.

9 **OTHER WITNESSES**

10 The names and addresses of witnesses, other than experts, to be used by each party at the
 time of trial and the general nature of the testimony of each are:

11 (a) On behalf of plaintiff:

12 1. Daniel Smithson
 13 c/o Kannin Law Firm P.S.
 119 SW 152nd St.
 14 Burien, WA 98166

15 Daniel Smithson is the Plaintiff and will testify about all aspects of the case.

16 2. Medical Records Custodian – may testify if necessary
 St. Joseph's Hospital
 17 1717 S J St
 Tacoma, WA 98405

18 The St. Joseph's Hospital Medical Records Custodian will testify regarding medical records for
 19 Mr. Smithson's injuries sustained on 1/22/2019 and provide authentication and certification of the
 medical records.

20 3. Medical Records Custodian – may testify if necessary
 21 Olympia Orthopaedic Associates
 615 Lilly Road
 22 Suite 100
 Olympia, WA 98506

23 The Olympia Orthopaedic Associates Records Custodian will testify regarding medical records
 24 for Mr. Smithson's injuries sustained on 1/22/2019 and provide authentication and certification
 of the medical records.

25 (b) On behalf of defendant:
 26

1. Jonathan Hammond – will testify
c/o John R. Nicholson
900 SW 16th Street, Suite 215
Renton, WA 98057

Mr. Hammond is a former Community Corrections Officer and will testify regarding his interactions with Mr. Smithson.

2. Richard Hendricks – will testify
15915 66th Street E
Sumner, WA 98390

Mr. Hendricks is a former Community Corrections Supervisor will testify regarding Mr. Smithson's interactions with DOC Community Corrections Officers.

3. Sarah Lewis – will testify
Department of Corrections
514 South 13th Street
Tacoma, WA 98402

Ms. Lewis is a Community Corrections Supervisor and will testify regarding Mr. Smithson's interactions with DOC Community Corrections Officers.

4. Daniel Libby – will testify
Department of Corrections
151 NE Hampe Way, Suite C2-4
Chehalis, WA 98532

Mr. Libby is a Community Corrections Officer and will testify regarding Mr. Smithson's interactions with DOC Community Corrections Officers.

5. Kyle Mowatt – will testify
2203 S. 88th Avenue
Yakima, WA 98903-9640

Mr. Mowatt is a former Community Corrections Officer and will testify regarding his interactions with Mr. Smithson.

6. Amber Robinson (Smith) – will testify
Department of Corrections
514 South 13th Street
Tacoma, WA 98402

Ms. Robinson is a Community Corrections Supervisor and will testify regarding Mr. Smithson's interactions with DOC Community Corrections Officers.

7. Daniel Smithson – may testify by deposition
c/o John Kannin, WSBA #27315
Kannin Law Firm, P.S.
119 SW 152nd Street
Burien, WA 98166

(206) 574-0202

Mr. Smithson is the plaintiff in this matter and has knowledge of the allegations giving rise to his claims. Defendant may play excerpts from Mr. Smithson's video-recorded deposition.

8. Deryl Jones – may testify
West Coast Recovery Housing
2031 8th Street
Tacoma, WA 98405
(253) 329-0355

Mr. Jones runs West Coast Recovery Housing where Plaintiff lived while on community custody and has knowledge regarding Plaintiff's behavior while he was on community custody.

9. Shawn Schneider – may testify
Washington State Department of Corrections
7345 Linderson Way SW
Tumwater, WA 98501
(360) 725-8213

Mr. Schneider is a DOC Correctional Hearing Officer. He has knowledge of Mr. Smithson's violation hearing.

EXHIBITS

Identify each exhibit with a number, which becomes the number for the exhibit at the trial and appears on the exhibit tag with the following information in table format:

Plaintiff's Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
001.	Pictures of Smithson's hand	Objection	Objection	FRE 401, 402, 403, 901; FRCP 26, not disclosed in discovery; MIL; F	
002.	St. Joseph Hospital Emergency Room (ER) bills	Objection	Objection	FRE 401, 402, 403, 901; F.	
003.	St. Joseph Hospital Emergency Room (ER) records	Stipulated	Stipulated		

Plaintiff's Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
004.	Olympia Orthopedic Associates medical bills	Stipulated	Objection	FRE 401, 402, 403; F	
005.	Olympia Orthopedic Associates medical records	Stipulated	Stipulated		
006.	Damages Summary spreadsheet	Objection	Objection	FRE 401, 402, 403, 801, 802, 805, 901; F; FRCP 26, not disclosed in discovery	
007.	Dr. Hatzakis CV	Stipulated	Objection	FRE 401, 402, 403, 801, 802, 805. FRCP 26; E; MIL.	
008.	Dr. Michael Hatzakis fee schedule	Stipulated	Objection	FRE 401, 402, 403, 801, 802, 805. FRCP 26; E; MIL.	
009.	Michael Hatzakis, MD report	Objection	Objection	FRE 401, 402, 403, 801, 802, 805, 901. FRCP 26; E; MIL	

Plaintiff's Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
010.	Deposition Transcript of Jonathan Hammond	Stipulated	Objection	FRE 401, 402, 403, 404, 602, 609, 701, 702, 801, 802, 805; MIL; LCR 32(e); Untimely designation; Court's ruling at 12/22/23 status conf.	
011.	Urine Specimen Cup	Objection	Objection	FRE 401, 402, 403, 901; F; MIL; FRCP 26, not produced in discovery	

Defendant's Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
500.	Judgment and Sentence, <i>State of Washington v. Daniel Brent Smithson, Jr.</i> , Pierce County Superior Court No. 17-1-02518-8 01040153-64	Objection	Objection	FRE 401, 402, 403, 404 FRE 602 FRE 801, 802, 805 FRE 901 E,F,R,MIL	
501.	Offender Legal Face Sheet 01140001-07	Objection	Objection	FRE 401, 402, 403, 404	

Defendant's Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
				FRE 602 FRE 801, 802, 805 F,R,MIL	
502.	01/13/2016 Observation Report 01130110	Objection	Objection	FRE 401, 402, 403, 404 FRE 602 FRE 801, 802, 805 E,F,R,MIL	
503.	03/17/2016 Observation Report 01130108	Objection	Objection	FRE 401, 402, 403, 404 FRE 602 FRE 801, 802, 805 E,F,R,MIL	
504.	03/22/2016 Observation Report 01130104-05	Objection	Objection	FRE 401, 402, 403, 404 FRE 602 FRE 801, 802, 805 E,F,R,MIL	
505.	04/10/2016 Observation Report 01130103	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
506.	05/24/2016 Observation Report 01130101	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 E,F,R,MIL FRE 801, 802, 805	
507.	07/02/2017 Observation Report 01130100	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	

Defendant's Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
508.	07/24/2017 Observation Report 01130099	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
509.	09/22/2017 Observation Report 01130097	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
510.	09/25/2017 Observation Report 01130096	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
511.	10/07/2017 Observation Report 01130095	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
512.	12/06/2017 Serious Infraction Report 01130321-22	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
513.	12/06/2017 Initial Serious Infraction Report 01130324	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
514.	12/06/2017 Serious Infraction Report 01130330	Objection	Objection	FRE 401, 402, 403, 404 FRE 701	

Defendant's Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
				FRE 801, 802, 805 E,F,R,MIL	
515.	12/13/2017 Disciplinary Hearing Minutes and Findings 01130323	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
516.	12/27/2017 Serious Infraction Report 01130287	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
517.	12/27/2017 Initial Serious Infraction Report 01130289-90	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
518.	01/03/2018 Disciplinary Hearing Minutes and Findings 01130288	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
519.	02/26/2018 Primary Encounter Report 01120056	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
520.	02/28/2018 Primary Encounter Report 01120055	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	

Defendant's Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
521.	03/14/2018 Primary Encounter Report 01120053	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
522.	03/15/2018 Serious Infraction Reports 01130196-97	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
523.	03/15/2018 Incident Report 01130199	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
524.	03/19/2018 Initial Serious Infraction Report 01130181	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
525.	03/22/2018 Witness Statement 01130185	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 F,R,MIL	
526.	03/22/2018 Disciplinary Hearing Minutes and Findings 01130182-183	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
527.	04/04/2018 Disciplinary Hearing Appeal Decision 01130190-191	Objection	Objection	FRE 401, 402, 403, 404 FRE 701	

Defendant's Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
				FRE 801, 802, 805 E,F,R,MIL	
528.	04/16/2018 Serious Infraction Report 01130212	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
529.	04/16/2018 Initial Serious Infraction Report 01130213	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
530.	04/24/2018 Felony Supervision Eligibility Screening Tool 01130171-174	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
531.	04/27/2018 Disciplinary Hearing Minutes and Findings 01130214-215	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
532.	05/11/2018 Serious Infraction Report 01130298-99	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
533.	05/11/2018 Initial Serious Infraction Report 01130300-01	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	

Defendant's Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
534.	05/16/2018 Disciplinary Hearing Minutes and Findings 01130302-03	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
535.	05/30/2018 Disciplinary Hearing Appeal Decision 01130209	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
536.	06/11/2018 Serious Infraction Report 01130306-07	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
537.	06/11/2018 Initial Serious Infraction Report 01130308-09	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
538.	06/14/2018 Disciplinary Hearing Minutes and Findings 01130310-311	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
539.	06/12/2018 Placement Referral 01130003	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
540.	06/11/2018 Behavioral Health Discharge Summary by Cynthia Goins, Ph.D.	Objection	Objection	FRE 401, 402, 403, 404 FRE 701	

Defendant's Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
	01120066-68			FRE 801, 802, 805, FRE 501 RCW 5.60 & RCW 18.83 Dr. Patient Privilege E,F,R,MIL	
541.	06/18/2018 Offender Release Plan 01130400-02	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
542.	06/20/2018 Serious Infraction Report 01130314	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
543.	06/20/2018 Initial Serious Infraction Report 01130315-16	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
544.	06/22/2018 Letter by Cynthia Goins, Ph.D. 01120105-06	Objection	Objection	FRE 401, 402, 403, 404 FRE 702 FRE 801, 802, 805 E,F,R,MIL ER 401, 402, 403, 404, FRE 501, RCW 5.60 & RCW 18.83 Dr. Patient Privilege	

Defendant's Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
545.	06/28/2018 Disciplinary Hearing Minutes and Findings 01130317-318	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
546.	06/20/2018 Order of Release 01130389	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
547.	Chronos (various dates) 01010001-32	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 F,R,MIL	
548.	07/03/2018 Conditions, Requirements, and Instructions 01040144-147	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
549.	07/03/2018 Offender Notification of Department Violation Process 01040148	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
550.	07/03/2018 Acknowledgment of Drug/Alcohol Testing – Field 01130262	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 F,R,MIL	
551.	01/17/2019 Notice of Violation/Stipulated Agreement 01040143	Objection	Objection	FRE 401, 402, 403, 404 FRE 701	

Defendant's Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
				FRE 801, 802, 805 E,F,R,MIL	
552.	01/23/2019 Use of Force Report by CCO Hammond 01040127-128	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
553.	01/23/2019 Supplemental Report by CCO Sarah Lewis 01040129	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
554.	01/23/2019 Supplemental Report by CCO Kyle Mowatt 01040130	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
555.	01/23/2019 Supplemental Report by CCO Amber Robinson 01040131	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
556.	01/22/2019 Franciscan System Services ED Record 02020149-172	Stipulated	Stipulated		
557.	01/28/2019 Report of Alleged Violation 01110001-03	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
558.	01/28/2019 Notice of Allegations, Hearing, Rights, and Waiver 01130223-224	Objection	Objection	FRE 401, 402, 403, 404 FRE 701	

Defendant's Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
				FRE 801, 802, 805 E,F,R,MIL	
559.	01/31/2019 Hearing and Decision Summary Report 01040140-41	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 E,F,R,MIL	
560.	01/31/2019 Confinement Order 01040142	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 F,R,MIL	
561.	02/20/2019 Infirmary/Extended Observation Unit Face Sheet 01120200	Objection	Objection	FRE 401, 402, 403, 404 FRE 702 FRE 801, 802, 805 ER 401, 402, 403, 404, FRE 501,RCW 5.60 & RCW 18.83 Dr. Patient Privilege E,F,R,MIL	
562.	02/05/2019 Encounter Record 02010014-19	Stipulated	Stipulated		
563.	02/08/2019 Wrist/Hand History Form 02010020	Stipulated	Stipulated		
564.	02/08/2019 Encounter Record 02010011-13	Stipulated	Stipulated		
565.	02/18/2019 Surgery Record 02010009-10	Stipulated	Stipulated		

Defendant's Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
566.	02/20/2019 Order of Release 01130377	Objection	Objection	FRE 401, 402, 403, 404 FRE 701 FRE 801, 802, 805 F,R,MIL	
567.	03/12/2019 Encounter Record 02010003-07	Stipulated	Stipulated		
568.	Washington State Tort Claim Form (amount of damages redacted in accordance with RCW 4.92.100 (1)(c)) 001-003	Stipulated	Stipulated		
569.	Curriculum Vita of Tracy Granston, M.D. 001-005	Stipulated	Stipulated	FRE 401, 402, 403, FRE 802, 805	
570.	Photos – UA Bathroom 001-7	Stipulated	Stipulated		
571.	St. Joseph's Medical Center X-rays January 22, 2019	Stipulated	Stipulated		
572.	Olympia Orthopaedic X-rays February 2, 2019 February 5, 2019 March 4, 2019	Stipulated	Stipulated		

Defendant intends to present its exhibits electronically to the jury.

The Parties' Objection Code:

E	Exhibit is objectionable because it constitutes attempted expert testimony from a person who was not designated as an expert (Fed. R. Civ. P. 26)
F	Lack of foundation
R	Irrelevant to Trial Issues
MIL	Subject of Motion in Limine

In the Authenticity and Admissibility columns, indicate “Stipulated” or “Objection”. If “Objection”, identify the objection in the Objection column. An objection based on a Fed. R. Evid. should reference the rule number; additional objections should be referenced by a code that the parties include with the exhibit list. The “Admitted” column is for use by the Court. (No party is required to list any exhibit which is listed by another party, or any exhibit to be used for impeachment only. See LCR 16 for further explanation of numbering of exhibits).

ACTION BY THE COURT

(a) This case is scheduled for trial before a jury on January 8, 2024, at 9:00 a.m.

(b) Trial briefs shall be submitted to the court on or before December 29, 2023.

(c) Jury instructions requested by either party shall be submitted to the court on or before December 27, 2023. Suggested questions of either party to be asked of the jury by the court on voir dire shall be submitted to the court on or before December 27, 2023.

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order.

This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this 3rd day of January, 2024.



Tiffany M. Cartwright
United States District Court Judge

1 Dated this 29th day of December, 2023.
2

3 /s/John R. Nicholson

4 JOHN R. NICHOLSON, WSBA #30499
5 Jackson & Nicholson, P.S.
6 900 SW 16th Street, Suite 215
7 Renton, WA 98057
8 Phone: 206-582-6001
9 Fax: 206-466-6085
10 John@jnseattle.com
11 Special Assistant Attorney General for Defendant

12 /s/John Kannin

13 JOHN KANNIN, WSBA #27315
14 Kannin Law Firm, P.S.
15 119 SW 152nd Street
16 Burien, WA 98166
17 Phone: (206) 574-0202
18 Fax: (206) 574-0101
19 john@kanninlaw.com
20 Attorney for Plaintiff
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22
23
24
25
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CERTIFICATE OF SERVICE

I certify that on January 2, 2024 I electronically filed the foregoing with the Court through CM/ECF and served on all parties or their counsel of record a copy of this document addressed as follows:

John Kannin, WSBA #27315
Kannin Law Firm, P.S.
119 SW 152nd Street
Burien, WA 98166
P: 206.574.0202
F: 206.574.0101
john@kanninlaw.com

☒ CM/ECF-Filing
☐ U.S. Mail Postage Prepaid
☐ ABC/Legal Messenger
☐ Email

DATED this 29th day of December, 2023, at Olympia, Washington.

/s/Jenny Singleton

JENNY SINGLETON, Paralegal
Jackson & Nicholson, P.S.
900 SW 16th Street, Suite 215
Renton, WA 98057
Phone: 206-582-6001
Fax: 206-466-6085
Jenny@jnseattle.com